case, namely, that where one party, in ignorance of the insanity of the other and before adjudication of insanity, has performed his part of the agreement, the contract cannot be avoided if the parties cannot be put in *statu quo*. 14 Columbia Law Rev. 674, n. 1. Naturally, in those jurisdictions where the contracts of insane persons are absolutely void, this does not obtain. *Elder* v. *Schumacher* (1893) 18 Colo. 433, 33 Pac. 175; *cf. Milligan* v. *Pollard* (1896) 112 Ala. 465, 20 So. 620. But in a few of the jurisdictions where the contract of one who has not been judicially declared insane is considered not wholly void but voidable, the privilege of the insane person to avoid it is unconditional and does not depend upon the good faith or knowledge of the other party, *Seaver* v. *Phelps* (Mass. 1831) 11 Pick. 304; see *Campbell* v. *Campbell* (1913) 35 R. I. 211, 85 Atl. 930, and may be exercised though it is impossible to restore the consideration or put the parties in *statu quo*. *Bates* v. *Hyman* (Miss. 1900) 28 So. 567. The reason given is that the contracts of an insane person are on the same footing as those of an infant. *Seaver* v. *Phelps, supra.* In those jurisdictions the rule of the instant case would seem to apply to persons of "weak understanding" only. See *Seaver* v. *Phelps, supra; Campbell* v. *Campbell, supra.* The rule of the instant case is subject to the exception that where the lunatic has not received the benefit of the consideration the contract will be set aside without a return of the consideration. *Jordan* v. *Kirkpatrick* (1911) 251 Ill. 116, 95 N. E. 1079; *see Feigenbaum* v. *Howe* (1900) 32 Misc. 514, 66 N. Y. Supp. 378. It would seem that the holding of the instant case is not strictly logical, 6 Columbia Law Rev. 115, and the reason assigned for the rule, namely, not that the legal essential of consent is present, but that the insane person by means of an apparent contract has secured an advantage or benefit which cannot be restored to the other party, *Matthiessen & Weichers Refining Co.* v. *McMahon's Adm'r* (1876) 38 N. J. L. 536; see *Flach* v. *Gottschalk* (1898) 88 Md. 368, 374, 41 Atl. 908, would seem to be a confusion of contractual with quasi-contractual principles; see 6 Columbia Law Rev. 116; 4 Columbia Law Rev. 433; but is undoubtedly the view of the great weight of authority. *Imperial Loan Co.* v. *Stone* [1892] 1 Q. B. 599.

INSURANCE—ACCIDENT—CHANGE OF OCCUPATION AS AFFECTING THE RISK.—A policy insured the deceased "while he is engaged in the occupation of a physician and surgeon". At the time of effecting the insurance, the deceased was engaged in the practice of his profession and was also an officer in the State Guard. During a strike, the Guard was called out to suppress belligerent opposition to the constituted authorities, and the deceased joined his command in the capacity of a medical officer wearing the Red Cross insignia. He divided his time between his private practice and his duties with the Guard, and in the morning of the very day of his death attended private patients. In the afternoon, while dressing a wounded officer on the field, the assured was shot and killed. The insurer contended, as a defense to an action on the policy, that the assured at the time of his death was not engaged "in the occupation of physician and surgeon" and that a fair interpretation of the contract was that the risk contemplated was confined to the practice of medicine in civil life and not in the army. *Held,* the insurer was liable. *Interstate Business Men's Acc. Ass'n.* v. *Lester* (C. C. A. 8th Cir. 1919) 257 Fed. 225.

What constitutes a change of occupation to avoid an obligation under a policy has presented an interesting problem, which the courts have almost uniformly solved in favor of the assured. Thus, it has been held that there was not as a matter of law a change of occupation where the assured was enjoying his recreation, *Union Mutual Accident Ass'n.* v. *Frohard* (1890) 134 Ill. 228, 25 N. E. 642, or was engaged in some incidental private business, *Hess* v. *Masonic Mut. Accident Ass'n.* (1897) 112 Mich. 196, 70 N. W. 460; *Stone's Adm'rs* v. *Casualty Co.* (1871) 34 N. J. L. 371; but *cf. Eggenberger* v. *Guarantee Mut. Acc. Ass'n.* (C. C. 1889) 41 Fed. 172, or was temporarily engaged in work ancillary to his main occupation. *Union Health & Accident Co.* v. *Anderson* (Colo. 1919) 180 Pac. 81; *Gotfredson* v. *German Com. Acc. Co.* (C. C. A. 1914) 218 Fed. 582. In these cases there is clearly no change of occupation; but to hold that there was no change where one was occupied pending reemployment in his regular occupation, *Simmons* v. *Western Travelers' Acc. Ass'n.* (1907) 79 Neb. 20, 112 N. W. 365; *cf. Taylor* v. *Illinois Com. Men's Ass'n.* (1909) 84 Neb. 799, 122 N. W. 41, seems doubtful. An extreme example of the last class of cases is *Jaques* v. *Order of United Com. Travelers* (Kan. 1919) 180 Pac. 200, where the deceased, who was insured as a travelling salesman, returned to his family at the age of 61 and took employment as a janitor; a finding of the jury that there had been no change of occupation, based on slight evidence that the deceased intended to return to the road, was sustained on appeal. It is difficult to see why logically a temporary change of occupation, though the intention to return to one's former occupation remains, should not, nevertheless, be regarded as a change. *Cf. Estabrooks' Adm'rs* v. *Union Casualty & Surety Co.* (1902) 74 Vt. 473, 52 Atl. 1048; *Aetna Life Ins. Co.* v. *Dunn* (C. C. A. 1905) 138 Fed. 629. What probably influenced the court in the *Taylor* and the *Jaques* cases in finding for the plaintiff was the fact that the change of occupation had no causal relation to the death of the assured. In the instant case, however, the assured was engaged as a physician and surgeon at the time of his death. It may be true that the risk in the mind of the insurer was the risk of death by accident in ordinary civil practice and not in ministering to wounded on the field of military operations, and that these are two distinct occupations in a proper classification of risks. But the insurer, nevertheless, saw fit to describe the risk assumed in words fairly covering both civil and military practice. Consequently, a reasonable interpretation gives this broader meaning to the words chosen by the insurer. In order to sustain this decision, it is not necessary, therefore, to determine whether the assured's excursion into the field of military operations was merely a temporary change of vocation or avocation reasonably within the language of the policy.

JUDGMENTS—DECREE OF DISTRIBUTION—COLLATERAL ATTACK.—Following a decree of distribution of a decedent's estate, reserving the statutory one-third for the widow, the heirs-at-law filed a bill for partition of the property pursuant thereto, and later, having discovered extrinsic facts, amended the bill, seeking to set aside the decree, on the ground that her marriage was not valid, and to have all the property partitioned among the heirs. *Held,* two judges dissenting, the decree was *res adjudicata* between the parties and not subject to collateral attack. *Knight* v. *Harrison* (N. D. 1919) 174 N. W. 633.